

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

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ADMINISTRATORS OF THE  
NATURAL AND SCENIC RIVERS SYSTEM

: : : : : : : : : : : : : : : :  
APPEAL OF DENIAL OF USE DOCKET  
PERMIT REQUEST OF :  
BOSSIER PARISH POLICE JURY NO. 73,323  
FOR WATER WITHDRAWAL FROM :  
BAYOU DORCHEAT  
: : : : : : : : : : : : : : : :

. . . Pursuant to Notice, the above  
matter came on for hearing before  
the Louisiana Wildlife and Fisheries  
Commission, Administrators of the  
Natural and Scenic Rivers System at  
11:15 o'clock a.m. on Tuesday,  
March 18, 1980, at 400 Royal Street,  
New Orleans, Louisiana.

Josemary L. Diliberto,  
Reporter



Helen R. Dietrich, inc.

CONVENTION REPORTING

333 ST. CHARLES AVENUE

NEW ORLEANS, LOUISIANA 70130 - (504) 524-4787

A T T E N D A N C ECOMMISSION MEMBERS:

J. C. Gilbert, Chairman

C. A. Riggs, Vice-Chairman

W. C. Ducote, Member

B. J. Rawls, Member

J. C. Farrelly, Member

H. C. Luttrell, Member

OTHERS:

PETER DUFFY, ESQ.

Representing the Commission

RANDY D. ELKINS, ESQ.

Representing Webster Parish Police Jury

TAYLOR BLANTIN

President, Webster Parish Police Jury

JIM BRANCH, Webster Parish



P R O C E E D I N G S

CHAIRMAN J. C. GILBERT: The Louisiana Wildlife and Fisheries Commission will convene now as Administrators of the Natural and Scenic Rivers System. And we were due to hear the appeal of the denial of application by the Bossier parish Police Jury to withdraw water from Bayou Dorcheat, which is a part of the Natural and Scenic Rivers System.

This is the first appeal that five members of this Commission have ever conducted. Clay Luttrell, who has been on the Commission longer than anyone else, I believe, has had one appeal.

We have the attorney for the Department, Peter Duffy, in the audience. I will ask Peter to come forward and explain the procedure.

Peter Duffy.

MR. PETER DUFFY: Mr. Chairman and Members of the Commission, you are scheduled to hear today the appeal in the matter: Denial of Use Permit Request of Bossier parish Police Jury for Water Withdrawal from Bayou Dorcheat. It



bears Docket No. 73,323, which is the official file that this matter was assigned when the application initially was filed and the public hearing was conducted and the appeal was initially made from the denial by the Hearing Officer, Mr. J. Burton Angelle.

As I mentioned before, this Commission has previously adopted rules for the Administration of the Natural Scenic Rivers Systems and has also adopted rules of appeal in administering that system as well.

Today, what we have before the Commission is an oral argument based upon written briefs that have been previously filed by interested parties who have declared themselves interested. In this instance the interested parties are the Bossier Parish Police Jury and the Webster Parish Police Jury. Both parties have filed briefs.

Under the rules the briefs should have been filed before now. Bossier Parish filed its brief approximately three weeks ago and we have just received the brief of Webster Parish today,



although I understand in speaking with Mr. Elkins that it was filed by mail some Wednesday or Thursday of last week.

Under the rules of Appellate Procedure, when a brief is not timely filed this Commission has the right to insist that the parties not be permitted to argue orally before the Commission, however, this Commission likewise has the right to waive that forfeiture.

I have talked with Mr. Blondeau, who is the Assistant District Attorney scheduled to represent and has represented Bossier Parish, in preparing his brief. He understood that he would probably not be permitted to argue because of the untimeliness of his brief.

I told him that Mr. Elkins is present. He has no objection to Mr. Elkins presenting oral argument on behalf of Webster Parish. But Mr. Blondeau, because of the physical matter, is going to submit his matter strictly on the brief previously filed with the Commission.

According to the Appellate Rules, the oral argument ordinarily would encompass sixty



minutes divided between the parties of interest, the Appellant and the Appellee. In view of the absence of Mr. Blondeau, Mr. Elkins would be permitted to argue before you thirty minutes. Mr. Elkins is also subject to being asked any questions that individual members of the Commission or the Chairman would like to ask regarding Webster Parish's position on this appeal.

CHAIRMAN GILBERT: Any questions the Commission would like to ask our Attorney, Peter Duffy?

MR. WAYNE DUCOTE: I would like to comment and congratulate Mr. Duffy or whomever got the packet together of information for this appeal, because I had no idea what this was about or what role the Commission played. And this is the type of information that I think the Commission needs for full back-up and full information to make a wise decision. And if you did it, you did a good job.

MR. DUFFY: Well, thank you. I can't take all the credit. I must also give credit to Miss Pie Pendley, who sent out a packet and also



Chuck Killebrew, who got the packet together for us.

CHAIRMAN GILBERT: It was very helpful.

Before we start the testimony by Mr. Randy Elkins, I would like to introduce the President of the Bossier Parish Police Jury, Mr. Taylor Blantin. Will you stand, Mr. Blantin?

MR. TAYLOR BLANTIN: Webster Parish.

CHAIRMAN GILBERT: Webster. I'm sorry. I was reading Webster and said Bossier. Forgive me.

Okay. And then we have with him Jim Branch. You're from Webster Parish, Jim.

Okay. Gentlemen, now we will commence the testimony. This is Randy D. Elkins, Attorney for the Webster Parish Police Jury. Mr. Elkins.

MR. RANDY D. ELKINS: Gentlemen, thank you for the opportunity to appear and argue a matter on behalf of the Webster Parish Police Jury. I assure you that I will not consume 30 minutes in my argument.

Our position is set forth in the brief



which we have filed before the Commission. Our position is very simple and very straight-forward. Gentlemen, we feel that the decision that was arrived at by the Administrator, which is now on appeal before this Body should be affirmed because to do otherwise would be illegal and in violation of the Scenic Rivers Act.

The Act is very explicit in outlining the uses and the modifications that can be made to the system that composes the Scenic Rivers, of which Bayou Dorcheat is one.

Mr. Blondeau filed, in his brief, an excellent statement of the case. We agree wholeheartedly with the facts as he set forth that are before the Commission for review.

Gentlemen, I think not only does the proposed application violate the letter of the law, but it also violates the spirit of the law as well. Insofar as the use of the water that could be withdrawn from Bayou Dorcheat under this proposed plan, while it is not an on-channel, a physical reservoirization of the water, it is really the same thing because it is the with-





drawal of the water from its natural element in Bayou Dorcheat and stored in a reservoir in Bossier Parish. We think that under the terms and conditions of the -- and the intent -- of the Scenic Rivers Act, this is clearly prohibited and should not be allowed.

The integrity of the system must be protected, gentlemen, otherwise the action of the Legislature would be meaningless and would result in needless litigation.

As I appreciate the facts that come before this Commission, the Administrator of the Scenic Rivers System has made the determination that Bossier Parish not be allowed to withdraw this water for reasons that are stated in my brief, which I'll refer to. I won't go into detail about that. The decision of the Administrator was based upon extensive public hearings, extensive investigation of Bayou Dorcheat, of interested parties in the area.

I think the decision was based on sound reason and upon adequate fact. It shows no abuse of discretion on his part.



I want to go one step further and then I'll conclude and entertain any questions that you may have, and that pertains to the equities of the situation that is involved here. And while my argument may sound contradictory to my previous statement, I don't mean for it to be. I'm only speaking in an equitable sense.

Bayou Dorcheat is located in Webster Parish and I feel, and justifiably so, it should be for the benefit and use of those people who reside in and are affected both economically and esthetically by its location there. Therefore, I feel the proposal by the Bossier Parish Police Jury would be an infringement upon that equity that is possessed by those people who are in physical proximity, who live there in the Webster Parish area, and who enjoy the benefits and use of Bayou Dorcheat.

I want to refer to -- no one really knows what the damage to Bayou Dorcheat would be if this plan were adopted. All we do know, gentlemen, is that the natural consequences of the environment would be interrupted. This, I



believe, is the very basic intent of the Legislature to prevent. And I'd ask you to consider the decision that was arrived at by the Administrative Hearing Officer. I believe you'll find that that decision was based on sound reason, on very very convincing fact, and at which time he denied this use permit, and I ask you, gentlemen, that you do so as well in affirming his decision.

I'll be happy to answer any question on the topic from the Commission at this time.

CHAIRMAN GILBERT: Mr. Ducote.

MR. DUCOTE: In your brief you said that the City of Minden has previously requested the use of this bayou as a reserve water source.

MR. ELKINS: That is something that predates my involvement with this matter and I know of no plans at the present time, Mr. Ducote, for the City of Minden to use this as a water supply source. That is not the basis of my argument to ask this Body to affirm the Hearing Officer.

MR. DUCOTE: I was just wondering if it had been denied or approved, but it hasn't been brought before the Commission.



MR. ELKINS: Right. As far as I know no formal action -- that, Mr. Ducote, is more of an equitable thing than a legal thing, I think. The people looking down the road years hence wondering if the economic expansion takes place in Webster Parish, as they hope, where will they get the source of fresh water to meet this economic development. That's what I meant when I said maybe that argument is contradictory with the legal argument that we are bound by state law to protect the integrity of that system, and that's what we're asking you to do.

CHAIRMAN GILBERT: Anything else, Wayne?

MR. DUCOTE: No, sir.

CHAIRMAN GILBERT: Bobby Rawls.

MR. RAWLS: To your knowledge, is any other political subdivision or water district taking water from Bayou Dorcheat?

MR. ELKINS: No, sir.

MR. RAWLS: None?

MR. ELKINS: No, not that I'm aware of.

CHAIRMAN GILBERT: Mr. Elkins, is any portion of Bayou Dorcheat in Bossier Parish?



MR. ELKINS: I do not believe so. I'm a life-long resident of the area, Mr. Chairman, and I do not believe that it is. Mr. Branch, who is also and somewhat older than I am, as you can tell by looking at him --

(LAUGHTER)

MR. ELKINS: -- would also say that -- Mr. Branch is a very good friend of mine.

CHAIRMAN GILBERT: He was.

MR. ELKINS: He and I are going to have lunch together and resolve that little problem.

But to answer your question, Mr. Chairman, for the record, to my knowledge, Bayou Dorcheat is located completely within Webster Parish.

CHAIRMAN GILBERT: Thank you, sir.

Are there other questions by members of the Commission?

(NO RESPONSE)

CHAIRMAN GILBERT: Hearing none, then Mr. Elkins, we thank you for your presentation.

MR. ELKINS: The Webster Parish Police Jury and I, personally, thank you as well, gentlemen, for your consideration.



CHAIRMAN GILBERT: Thank you, sir.

Mr. Duffy, so you have any further comments to make at this time?

MR. DUFFY: No, sir.

CHAIRMAN GILBERT: Gentlemen, then the Chair will say that both briefs, all records and all evidence will be examined by the Commission and within sixty (60) days a decision will be rendered.

If there is no further business, this hearing is now officially adjourned.

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(Whereupon, at 11:30 o'clock a.m.  
the proceedings were concluded.)

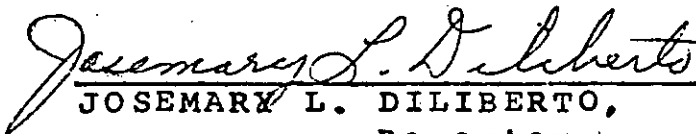
Josemary L. Diliberto,  
Reporter



C E R T I F I C A T E

I, the undersigned reporter, DO HEREBY CERTIFY that the above and foregoing (13 pages of typewritten matter) is a true and correct transcription of the tape recording and of the stenographic notes of the proceedings herein, transcribed by me, at the time and place hereinbefore noted.

New Orleans, Louisiana, this 8th day of April, 1980.

  
JOSEMARY L. DILIBERTO,  
Reporter

